

## § 101.1201

competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

[62 FR 48795, Sept. 17, 1997]

## Subpart N—Competitive Bidding Procedures for the 38.6–40.0 GHz Band

SOURCE: 63 FR 6106, Feb. 6, 1998, unless otherwise noted.

### § 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive 38.6–40.0 GHz initial applications are subject to competitive bidding. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

### § 101.1202 Competitive bidding design for 38.6–40.0 GHz licensing.

The following competitive bidding procedures generally will be used in 38.6–40.0 GHz auctions. Additional, specific procedures may be set forth by public notice. The Commission also may design and test alternative procedures. See 47 CFR §§ 1.2103 and 1.2104. The Commission will employ simultaneous multiple round bidding when choosing from among mutually exclusive initial applications to provide 38.6–40.0 GHz service, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

### § 101.1203 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which 38.6–40.0 GHz licenses will be auctioned.

(b) *Grouping.* The Commission will conduct a series of sequential auctions of three channels at a time within each BTA unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(c) *Minimum bid increments.* The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

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(d) *Stopping rules.* The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

### § 101.1204 Bidding application procedures.

All applicants to participate in competitive bidding for 38.6–40.0 GHz licenses must submit applications on FCC Forms 175 pursuant to the provisions of § 1.2105 of this Chapter. The Wireless Telecommunications Bureau will issue a public notice announcing the availability of 38.6–40.0 GHz licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This public notice also will specify the date on or before which applicants intending to participate in a 38.6–40.0 auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the forms, any filing fee that must accompany the application or any upfront payment that need to be submitted, and the location where the application must be filed. In addition, each applicant must identify its status as a small business or rural telephone company.

### § 101.1205 Submission of upfront payments and down payments.

(a) Each bidder in the 38.6–40.0 GHz auction will be required to submit an upfront payment. This upfront payment will be based upon a formula established by the Wireless Telecommunications Bureau and announced by public notice prior to the auction.

(b) Each winning bidder in the 38.6–40.0 GHz auction shall make a down

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payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid by a date and time to be specified by public notice, generally within ten business days following the close of bidding. Full payment of the balance of the winning bids shall be paid within ten days after public notice announcing that the Commission is prepared to award the license. The grant of the application is conditional upon receipt of full payment. The Commission generally will grant the license within a reasonable period of time after receiving full payment.

### § 101.1206 Long-form applications.

Each winning bidder will be required to submit a long-form application. Winning bidders must submit long-form applications within ten (10) business days after being notified by Public Notice that it is the winning bidder. Long-form applications shall be processed under the rules contained in parts 1 and 101 of the Commission's rules.

### § 101.1207 Procedures for filing petitions to deny against long-form applications.

The applicable procedures for the filing of petitions to deny the long-form applications of winning bidders contained in § 1.2108 of the Commission's rules shall be followed by the applicant (see 47 CFR 1.2108).

### § 101.1208 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i)) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, (as defined in § 101.1209(b)(1)(ii)) may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

(b) *Unjust enrichment.* (1) A small business seeking transfer or assignment of a license to an entity that is not a small business under the definitions in § 101.1209(b)(1)(i) and (ii), will

be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the license term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty. These penalties must be paid back to the U.S. Treasury as a condition of approval of the assignment or transfer.

(2) If a small business that utilizes a bidding credit under this section seeks to assign or transfer control of its license to a small business meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

### § 101.1209 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1201 through 101.1209, unless otherwise specified in those sections.

(b) *Small business and very small business.* (1)(i) A small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than \$40 million for the preceding three years.

(ii) A very small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than \$15 million for the preceding three years.